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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,082	07/10/2003	Steven B. Leeb	2002147-0020	3377

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CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON, MA 02110

EXAMINER

PASCAL, LESLIE C

ART UNIT	PAPER NUMBER
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2613

MAIL DATE	DELIVERY MODE
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07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/617,082	LEEB ET AL.	
	Examiner	Art Unit	
	Leslie Pascal	2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2613

1. The specification teaches that the related cases teach determining a location, which transmits a respective relative position, detecting the relative position and determining the relative position. This does not appear to be true. The applicant points to areas of the specification of the related patents. But these areas do not teach what the applicant claims (or says in the present application's specification that is taught there). For example, the applicants' specification says that Hovorka 6504633 teaches position or location determination by comparing to relative positions. The areas of the specification pointed at by the applicant relate to lock-in of a receiver in order to provide a better signal. It has nothing to do with position determination. Especially with regard to relative position. It would appear that the applicant should delete all incorrect statements with regard to what is taught by related applications/patents, which appear to be totally incorrect. The applicant then goes on to disclose that it would have been obvious to make different determinations based on other disclosed references. The examiner feels that the related patents/ applications do not teach what is claimed in this application and so the applicant is not entitled to the priority dates of the parent application (since this is a CIP). If the applicant argues that the parent applications contain the information, it would appear that obvious double patenting rejections would be required in view of the applicants' arguments and the obvious statements in the applicants' specification.

Appropriate correction is required

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2613

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 8-24, 26-51, 53-58, 59-60, 62-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Perkins et al (6865347).

Perkins et al teach a method of determining a location by providing a lighting infrastructure having transmitters which optically transmit a respective relative position of the transmitter with respect to a fixed position (claim 8, lines 2-5), detecting the relative position (claim 8, lines 6-8) and determining the relative position of the receiver from the detected relative position (claim 8, lines 9-11). In regard to claims 9 and 27, see claim 2 of Perkins. In regard to claims 10-11, see column 4, lines 1-14 of Perkins. . In regard to claims 13, see claim 6 of Perkins. In regard to claim 14, see column 6, lines 1-9 of Perkins. In regard to claim 15, see column 6, lines 66-column 7, line 3 and lines 9-17 and 27-29 of Perkins. In regard to claim 16-19, he teaches an address (column 7, line 1). In regard to claim 20, see column 7, lines 9-10. In regard to claim 21-22, see column 7, lines 17-20. In regard to claim 23, see column 7, lines 5-9 and 21-29. In regard to claims 24 and 28, see column 7, lines 53-60 and 21-25. In regard to terrestrial of claim 29, see column 3, lines 15-18. In regard to claims 36 and 39, see claims 11 and 14 of Perkins. In regard to claim 43, see claim 18 of Perkins. In regard to claim 44, see claim 19 of Perkins. In regard to claim 45, see claim 20 of Perkins. In

regard to claims 46-48, see claims 21-23, respectively of Perkins. In regard to claims 64-79, see column 5, lines 31-35.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25, 52, 58 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins et al (6865347).


In regard to claim 25, see claim 7 and column 7, lines 35-38 of Perkins. In that he teaches that the central office does the relative determining and he teaches that the receiver can do the determining steps using the list and the central office stores the list, it would have been obvious to use these steps at either the central office or the receiver. In regard to claims 52, 58 and 61; see column 6, lines 40-44 and column 7, lines 45-49. Although he does not specifically teach that he corrects the position using the list, in other embodiments, he teaches using the list to determine the position, it would have been obvious to determine the position and correct it based on the list, since he teaches that it is well known to determine the position based on either calculations or using a list to determine.

6. The applicant argues that the applicant is entitled to the priority dates of parent cases. This does not appear to be true because the claims are drawn to an invention that was not disclosed in the parent applications.

7. If the applicant has questions concerning this communication or earlier communications from the examiner should be directed to Leslie Pascal whose telephone number is 571-272-3032. The examiner can normally be reached on Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Leslie Pascal
Primary Examiner
Art Unit 2613